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State v. Hiebert Respondent's Brief Dckt. 41402

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

DENNIS EARL HIEBERT,

Defendant-Appellant.

No. 41402

Bonner Co. Case No.
CR-2011-3170

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BONNER**

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District Judge

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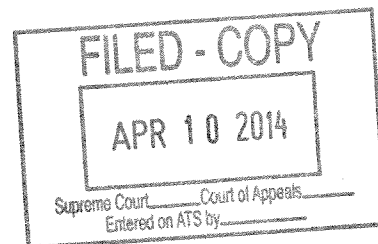


TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE.....	1
Nature Of The Case	1
Statement Of The Facts And Course Of The Proceedings.....	1
ISSUE	5
ARGUMENT.....	6
Hiebert Has Failed To Establish The District Court Erred In Denying His Suppression Motion	6
A. Introduction.....	6
B. Standard Of Review.....	7
C. Hiebert Has Failed To Demonstrate Error In The Denial Of His Suppression Motion	7
CONCLUSION	12
CERTIFICATE OF MAILING.....	13

TABLE OF AUTHORITIES

CASES

PAGE

<u>Dawson v. Cheyovich Family Trust</u> , 149 Idaho 375, 234 P.3d 699 (2010).....	6
<u>Illinois v. Gates</u> , 462 U.S. 213 (1983)	11
<u>State v. Christensen</u> , 131 Idaho 143, 953 P.2d 583 (1998).....	8
<u>State v. Diaz</u> , 144 Idaho 300, 160 P.3d 739 (2007).....	7
<u>State v. Fisher</u> , 140 Idaho 365, 93 P.3d 696 (2004).....	7
<u>State v. O'Keefe</u> , 143 Idaho 278, 141 P.3d 1147 (Ct. App. 2006)	6, 7
<u>State v. Revenaugh</u> , 133 Idaho 774, 992 P.2d 769 (1999).....	11
<u>State v. Tietzort</u> , 145 Idaho 112, 175 P.3d 801 (Ct. App. 2007)	8, 11
<u>State v. Zichko</u> , 129 Idaho 259, 923 P.2d 966 (1996)	6

STATEMENT OF THE CASE

Nature Of The Case

Dennis Earl Hiebert appeals from the judgment entered upon his conditional guilty plea to felony possession of a controlled substance, claiming the district court erred in denying his motion to suppress.

Statement Of The Facts And Course Of The Proceedings

Law enforcement received information that two individuals with outstanding felony arrest warrants were located on Hiebert's property where Hiebert operated a "scrap yard" known as "Mr. D's Auto Wrecking." (Tr.¹, p.6, L.25 – p.7, L.8, p.45, Ls.6-16.) While on the premises looking for the two suspects, Detective Mark Strangio "came across a vehicle that did not fit right with the actual property" because it was "inconsistent" with the other vehicles, which were "dilapidated and very run-down." (Tr., p.7, Ls.9-15, p.10, Ls.16-18.) This particular vehicle was "clean, had no license plates whatsoever . . . , and upon closer inspection, [Detective Strangio] could see from the outside of the vehicle that the steering column was broken apart and there was a screwdriver on the driver's side floorboard." (Tr., p.10, Ls.18-23.) This "raised [Detective Strangio's] level of suspicion" that the car was stolen, so he "ran the vehicle's V.I.N. number" and "confirmed that it was stolen out of Stevens County,

¹ There are three transcripts included in the record on appeal. The transcript that includes the application for a search warrant will be referred to as "Tr.," the transcript of the suppression hearing will be referred to as "Supp. Tr.," and the transcript that includes Hiebert's plea and sentencing will be referred to as "Sent. Tr."

Washington.” (Tr., p.11, Ls.1-14.) Detective Jason Hanes, who was assisting Detective Strangio, ran the license plates of other cars on the property and was advised by dispatch that the plates were registered to different vehicles. (Tr., p.14, L.19 – p.15, L.1.) Based on this information, Detective Strangio requested a search warrant for the property to investigate for evidence of automobile theft. (Tr., p.13, Ls.11-17.) The magistrate issued the warrant for “Mr. D’s Car Shop, 3700 Highway 41, Oldtown, Idaho, Bonner County.” (R., Vol. I, pp.32-38.)

The following day, law enforcement sought to amend the search warrant. (See Tr., p.52, Ls.17-20.) Initially, the prosecutor noted there was a typographical error in the address in that Mr. D’s is “actually located at 37000 Highway 41,” rather than 3700 Highway 41. (Tr., p.52, Ls.21-23.) Next, Detective Sergeant Marty Ryan testified about the activities that had taken place to that point in relation to the execution of the search warrant issued the day before. (See generally Tr., pp.53-93.) Detective Ryan explained that, on the property, there are several trailers that “seem to be temporary flop houses at different times.” (Tr., p.55, Ls.16-23; see also p.56, Ls.7-21.) Detective Ryan also testified that they had discovered additional stolen vehicles, including a Winnebago motor home, and parts from stolen vehicles. (Tr., p.57, L.10 – p.62, L.7.) Detective Ryan further noted that, in addition to the stolen vehicles, law enforcement located evidence that someone was “cooking methamphetamine” at that location. (Tr., p.74, L.11 – p.75, L.17.) Specifically, law enforcement noted two propane tanks “on the back side of the property” that had a “bluish, green haze” on the brass fittings, which is “very distinct” and is consistent with storing

“anhydrous ammonia” used for making methamphetamine. (Id.) In addition, there was a camp trailer that was “all locked up” and looked abandoned, but it had electricity running to it from Hiebert’s home. (Tr., p.75, L.22 – p.76, L.22.) And, when law enforcement walked by the area of the camper, they noticed an “odor of a methamphetamine laboratory.” (Tr., p.76, L.24 – p.77, L.15.) A “protective sweep” of the camper revealed a bundle of methamphetamine and paraphernalia. (R., p.263; Tr., p.81, L.25 – p.82, L.5.)

Based on the additional evidence presented, the magistrate issued an amended search warrant expanding the authorized scope of the search and the time within which to complete the search. (R., Vol. I, pp.54-62.) A second search warrant was issued six days later to allow the officers to seize two additional items from Hiebert’s property – another stolen vehicle and a license plate from a stolen vehicle. (R., pp.104-108.)

The state ultimately charged Hiebert with seven counts of grand theft by possession of stolen property and one count of possession of a controlled substance, methamphetamine. (R., Vol. I, pp.39-40, 130-133, 152-155; R., Vol. II, pp.290-295.) Hiebert filed a motion to suppress, contending the initial entry onto his property constituted an illegal search and “[t]he information obtained in the illegal search led to the issuance of a search warrant.” (R., Vol. I, p.167.) Hiebert specifically requested suppression of “all evidence obtained . . . including

but not limited to the search of [his] property and house.”² (R., Vol. I, p.168.) The district court held a hearing on Hiebert’s motion after which it entered a written decision denying his request for suppression. (R., Vol. II, pp.260-268.) Hiebert thereafter entered a conditional guilty plea to the possession of a controlled substance charge reserving the right to challenge the court’s denial of his suppression motion; the state dismissed the remaining charges.³ (R., Vol. II, pp.296-300; Sent. Tr., p.9, Ls.6-11, p.13, Ls.1-6, p.14, Ls.8-14.) The court imposed a unified five-year sentence with two years fixed for possession of methamphetamine but suspended the sentence and placed Hiebert on probation. (R., Vol. II, pp.310-315.) Hiebert filed a timely notice of appeal. (R., Vol. II, pp.327-329, 331-333.)

²Hiebert also sought suppression of “all evidence and statements obtained during the custodial interrogation,” claiming “the officer failed to adequately advise [him] of his rights and/or obtain a waiver.” (R., Vol. I, p.168.) However, at the outset of the suppression hearing, the state stipulated to suppression of Hiebert’s statements. (Supp. Tr., p.5, Ls.13-17.)

³ Hiebert initially pled guilty to three counts of grand theft by possession and the possession of a controlled substance charge, but later withdrew his guilty pleas after the court indicated it would not follow the terms of the plea agreement. (R., pp.275-282, 288.)

ISSUE

Hiebert states the issues on appeal as:

- a. Whether the District Court erred in denying the Defendant's Motion to Suppress?
- b. Whether all of the evidence in the case was the result of a warrantless entry and search?
- c. Whether the District Court erred in its analysis, decision, acts and in the entry of the Memorandum Decision RE: Defendant's Motion to Suppress entered November 28, 2012?

(Appellant's Brief, p.7 (punctuation original).)

The state rephrases the issue on appeal as:

Has Hiebert failed to establish the district court erred in denying his suppression motion?

ARGUMENT

Hiebert Has Failed To Establish The District Court Erred In Denying His Suppression Motion

A. Introduction

Hiebert contends, as he did below, that Detective Strangio's actions in ascertaining the V.I.N. number from the stolen vehicle constituted an unlawful search because, Hiebert argues, Detective Strangio "depart[ed] [from] the normal access route or vantage point" in order to "obtain the VIN number." (Appellant's Brief, p.9.) Hiebert further asserts that, because the initial search warrant was issued based on the results of Detective Strangio's unconstitutional actions, the warrant was invalid.⁴ (Appellant's Brief, pp.9-10.) Application of the correct legal standards to the facts shows Hiebert has failed to show the district court erred in denying his motion to suppress.

⁴ Hiebert also complains that the initial search warrant had "the wrong address" and asserts the "incorrect address is sufficient to suppress the evidence gained by the Warrant(s) [sic]." (Appellant's Brief, p.10.) This Court should decline to consider this argument because Hiebert fails to support it with any authority. Dawson v. Cheyovich Family Trust, 149 Idaho 375, 234 P.3d 699 (2010) (citations omitted) ("Where an appellant fails to assert his assignments of error with particularity and to support his position with sufficient authority, those assignments of error are too indefinite to be heard by the Court. A general attack on the findings and conclusions of the district court, without specific reference to evidentiary or legal errors, is insufficient to preserve an issue."); State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996) ("When issues on appeal are not supported by propositions of law, authority, or argument, they will not be considered."). Even if the Court were to consider the issue, Hiebert's claim would fail because the error in the address in the initial warrant, which was corrected the following day, would not render the initial warrant invalid given the description of the property and pictures that were provided that more than adequately described the place to be searched so that there was no risk that officers would mistakenly search a place other than the one intended. Compare State v. O'Keefe, 143 Idaho 278, 285, 141 P.3d 1147, 1154 (Ct. App. 2006).

B. Standard Of Review

The standard of review of a suppression motion is bifurcated: when a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Diaz, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007).

C. Hiebert Has Failed To Demonstrate Error In The Denial Of His Suppression Motion

In reviewing whether a magistrate court properly issued a search warrant, "the appellate court's function is limited to insuring that the magistrate had a 'substantial basis' for concluding that probable cause existed, with great deference paid to the magistrate's determination." State v. Fisher, 140 Idaho 365, 369, 93 P.3d 696, 700 (2004) (citations omitted). A defendant challenging a search pursuant to a search warrant bears the burden of proving any constitutional violation. State v. O'Keefe, 143 Idaho 278, 287, 141 P.3d 1147, 1156 (Ct. App. 2006).

Hiebert contends the initial search warrant was invalid because its issuance was based on Detective Strangio's act of "depart[ing] [from] the normal access route or vantage point" in order to further investigate whether the car he saw from the "normal access route" was stolen. (Appellant's Brief, p.9.) Because Detective Strangio's departure from the "normal access route" did not violate Hiebert's constitutional rights, Hiebert has failed to meet his burden of showing the warrant issued based on Detective Strangio's actions was invalid.

“Under the open view doctrine, a police officer’s observations made from a location open to the public do not constitute a search. This is because one cannot have a reasonable expectation of privacy in what is knowingly exposed to public view.” State v. Christensen, 131 Idaho 143, 146, 953 P.2d 583, 586 (1998) (citations omitted). Thus, “when the police come onto private property to conduct an investigation or for some other legitimate purpose and restrict their movements to places where ordinary visitors could be expected to go, observations from such vantage points are lawful.” State v. Tietzort, 145 Idaho 112, 115, 175 P.3d 801, 804 (Ct. App. 2007) (citations omitted). “Direct access routes to the house, including driveways, parking areas, and pathways to the entry, are areas to which the public is impliedly invited.” Id. “Police officers restricting their activity to such areas are permitted the same intrusion and the same level of observation as would be expected from a reasonably respectful citizen.” Id. A court may find an intrusion “exceed[s] the scope of the implied invitation” only if there is a “substantial and unreasonable departure from the normal access route.” Id. “What is lawfully seen in open view may furnish probable cause for a warrant.” Id.

At the suppression hearing, Detective Strangio testified that he and Detective Hanes went to Hiebert’s property, known as Mr. D’s Auto Wrecking, based upon information that two fugitives with outstanding warrants were located on the property. (Supp. Tr., p.8, Ls.14-18, p.9, Ls.1-4.) When the detectives arrived, the gate was open and there was a sign on the gate that read “OPEN.” (Supp. Tr., p.10, Ls.10-14; Exhibit B.) Detectives Strangio and Hanes got out of

their vehicles and knocked on what they “thought was the main residence at the location” and “announced sheriff’s office several times” but “got no verbal reply” and did not “see anybody around the premises.” (Supp. Tr., p.9, Ls.5-9; see also p.17, Ls.13-19.) The detectives, therefore, proceeded on foot onto the property as it was “very common to find people on the back portion of the property.” (Supp. Tr., p.17, Ls.20-24.) In fact, Detective Strangio explained, “[i]t is a common area to find fugitives, other stolen vehicles, drug involvement.” (Supp. Tr., p.18, Ls.10-11.) “[S]ince 2000,” law enforcement in that area have “had at least 80 . . . law enforcement issues involving drugs, stolen vehicles, methamphetamine, stolen property, fugitives, and crimes of violence occurring on that property.” (Supp. Tr., p.18, Ls.11-15.) And, when Detective Strangio had been there in the past, there were people “resid[ing] in the small camp trailers” located there. (Supp. Tr., p.18, Ls.22-24.)

During the walk toward the back of the property, Detective Strangio noticed a car that was “out of place” because it was clean and did not have license plates. (Supp. Tr., p.19, Ls.2-10.) The car was between two trailers. (Exhibit G.) When Detective Strangio walked over to the car he noticed evidence indicating it had been stolen and confirmed as much after running the V.I.N. number that was on the dash, which he could read from outside the car. (Supp. Tr., p.20, Ls.10-22.) Detective Strangio also knocked on the door of the trailer next to the car to see if anyone was inside but did not get an answer. (Supp. Tr., p.19, L.18 – p.20, L.3.)

Since Hiebert operates a business that is open to the public and that was open on the date Detectives Strangio and Hanes were on the property, they, like other members of the public were impliedly, if not explicitly, invited onto Hiebert's property. Hiebert does not seem to contest that point given his focus on Detective Strangio's act of "depart[ing]" from "the normal access route" in order to obtain the vehicle identification number of one of the cars. (Appellant's Brief, p.9.) While Detective Strangio unquestionably left the dirt path in order to get the number (Supp. Tr., p.22, L.25 – p.23, L.3), such a departure was not substantial or unreasonable under the circumstances. Ordinary visitors to a wreckage yard like the one operated by Hiebert would surely feel free to look at the items available on the yard and it would not be unusual for such a potential customer to be interested in parts that may be available from a newer model, cleaner car – the very traits that attracted Detective Strangio's attention. That Detective Strangio was interested in the car for a different reason does not make his actions unreasonable. Indeed, under the open view doctrine, the only relevant question is whether Detective Strangio's act of leaving the access route was beyond the scope of the implied invitation; Detective Strangio's motives are completely irrelevant to that question. Because Detective Strangio did not behave in a manner that exceeded the scope of the implied invitation to a prospective customer of Hiebert's business, the district court correctly concluded Hiebert was not entitled to suppression.

Even if the Court concludes that it was constitutionally impermissible for Detective Strangio to leave the path in order to get the vehicle identification

number off of the suspicious vehicle, there was still sufficient probable cause to support issuance of the warrant. “In determining the validity of a search warrant whose underlying application contains illegally obtained information, the ultimate question is whether the remaining information presented to the magistrate, after the tainted evidence is excluded, contains adequate facts from which the magistrate could have included that probable cause existed for the issuance of a search warrant.” State v. Revenaugh, 133 Idaho 774, 779, 992 P.2d 769, 774 (1999) (internal quotations omitted); see also State v. Tietzort, 145 Idaho 112, 116, 175 P.3d 801, 805 (Ct. App. 2007). Probable cause is based on “a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before [the magistrate], including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” Illinois v. Gates, 462 U.S. 213, 238 (1983).

Detective Strangio’s observations from the access route provided suspicion that the car he noticed was stolen because it “did not fit right” with the other cars on the property given that it was clean and had no license plates. (Tr.⁵, p.7, Ls.9-12, p.22, Ls.18-24.) In addition to Detective Strangio’s observations, Detective Hanes ran “several of the license plates through dispatch” and those plates “came back to different vehicles than what the plates were registered to.” (Tr., p.14, L.13 – p.15, L.8.) Detective Strangio testified that

⁵ The transcript that contains testimony relating to the search warrants (referred to herein as “Tr.”) was, by stipulation, submitted for the court’s consideration in relation to Hiebert’s motion to suppress. (Supp. Tr., p.29, Ls.4-18.)

is "consistent with somebody whose [sic] trying to hide the identity of the vehicles." (Tr., p.19, Ls.12-17.) When asked if Detective Hanes left the roadway to get the license plate numbers, Detective Strangio answered: "Well, I don't know if he left the roadway but from where I saw him standing, he was in the driveway."⁶ (Tr., p.24, Ls.1-6.)

The information provided to the magistrate beyond the fact that there was a stolen vehicle on Hiebert's property was sufficient to establish probable cause to believe the property contained evidence of the same crime for which the warrant issued. Accordingly, even if the vehicle identification number is excluded from the equation, issuance of a warrant would still have been proper.

Hiebert has failed to show the district court erred in denying his motion to suppress.

CONCLUSION

The state respectfully requests that this Court affirm the judgment entered upon Hiebert's conditional guilty pleas to felony possession of a controlled substance.

DATED this 10th day of April, 2014.



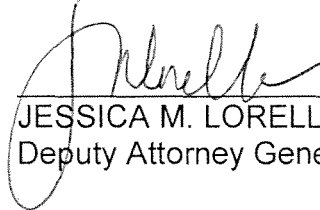
JESSICA M. LORELLO
Deputy Attorney General

⁶ Importantly, Hiebert has not claimed otherwise.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 10th day of April, 2014, served two true and correct copies of the attached RESPONDENT'S BRIEF by placing the copies in the United States mail, postage prepaid, addressed to:

REX A. FINNEY
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JESSICA M. LORELLO
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JML/pm